

Application No. 10/734,671
Amendment dated November 7, 2007
Reply to Office Action dated August 24, 2007

REMARKS

**Reconsideration And Allowance
Are Respectfully Requested.**

Claim 49 is currently pending. Claims 1-48 have been canceled by way of prior amendments. No claims have been amended. No new matter has been added. No new claims have been added. Reconsideration is respectfully requested.

With regard to the rejection under 35 U.S.C. 112, first paragraph, Applicants respectfully request this rejection be withdrawn in view of the following remarks. Although the Specification does not specifically include the terms “the mass of solid particulate marker material being disposed within an inner lumen of the elongated member”, the Specification does support the invention as claimed and one of ordinary skill in the art would certainly understand how to dispose solid particulate marker material in a lumen or in other words preload markers into a tube.

On numerous occasions in the Specification, the markers are disclosed as being preloaded, deployed or traveling through a lumen or tube. Page 7, lines 17-19, states, “[i]n some embodiments, these deployment functions are communicated by means of the marker elements themselves travelling through the lumen for deployment from the distal region”. Page 7, line 28, states, “...deployed from the lumen”. Page 8, line 4, states, “...deployment from the lumen...”. Page 15, lines 21-26, states, “[i]t is also within the scope of the invention to deliver the marker element through any tube which has access to the body or using optical medical instruments...through the body of the instrument”. Page 17, lines 9-11, states, “...a plurality of marker elements 12b (two are shown, though any number may be employed) may be preloaded into tube 54b...”.

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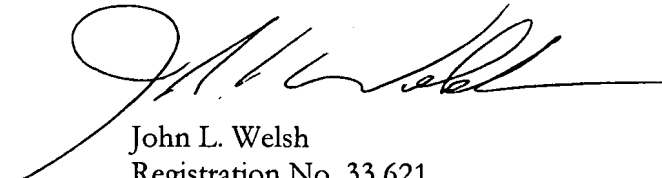
Thus, when the Specification is read as a whole by one of ordinary skill in the art, they would certainly be able to produce a delivery system wherein any type of marker is disposed in a lumen. As such, similar language has been added to the Specification on page 17.

Claim 49 also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,741,198 to Burton in view of U.S. Patent No. 5,123,414 to Unger. Applicants respectfully traverse this rejection. Burton has been relied upon to teach a syringe filled with a mass of solid particulate marker material disposed within the inner lumen. However, Burton does not teach a marker material. A marker has a specific purpose of marking a site and not traveling from that site. If it were to move, it could no longer perform the function of marking. Burton teaches a radiopaque contrast material in the form of a ferrofluid, which is a fluid containing magnetic particles for the purpose of moving the contrasting fluid up and down the spinal column. The ferrofluid may contain metallic particulate, but their purpose is not to mark. In fact, their purpose is to move the particles, and hence the fluid, along the spinal column during an examination. As such, Burton does not teach a marker and, in fact, teaches away from a marker. With this in mind, it is Applicants' opinion the rejection of claim 49 is improper and Applicants respectfully request the outstanding rejection be withdrawn.

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It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested. If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact Applicants' representative at the below number.

Respectfully submitted,



John L. Welsh
Registration No. 33,621

Welsh & Flaxman LLC
2000 Duke Street, Suite 100
Alexandria, VA 22314
(703) 920-1122

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